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# Post-Conflict Reconstruction

Eric Talbot Jensen  
*BYU Law*, [jensene@law.byu.edu](mailto:jensene@law.byu.edu)

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# POST-CONFLICT RECONSTRUCTION\*

ERIC TALBOT JENSEN\*\*

I am very happy to be here today sitting on this panel. Post-conflict reconstruction is an extremely important topic and is becoming more important to the military given recent conflicts.

On November 28, 2005, the Department of Defense (DoD) issued Directive 3000.05 entitled Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations.<sup>1</sup> The directive “provides guidance on stability operations”<sup>2</sup> and “establishes DoD policy and assigns responsibilities within the Department of Defense for planning, training, and preparing to conduct and support stability operations.”<sup>3</sup> The directive defines stability operations as “military and civilian activities conducted across the spectrum from peace to conflict to establish or maintain order in States and regions.”<sup>4</sup> Post-conflict reconstruction would

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\* This essay is adapted from a speech given at the New England Journal of International and Comparative Law Symposium “Modern Warfare: The Role of the Non-State Actor” on Feb. 23, 2007 at New England School of Law, Boston, MA.

\*\* Eric Talbot Jensen is an active duty Lieutenant Colonel serving as Chief, International Law Branch, Office of The Judge Advocate General, U.S. Army. He is a 1989 graduate of Brigham Young University (B.A.), a 1994 graduate of University of Notre Dame (J.D.), a 2001 graduate of The Judge Advocate General’s Legal Center and School (LL.M.), and a 2006 graduate of Yale Law School (LL.M.). Lieutenant Colonel Jensen’s service includes duty as an Operational Law Attorney, Task Force Eagle in Bosnia, as a Command Judge Advocate, Task Force Able Sentry in Macedonia, as a Chief of Military Law, Task Force Eagle, in Bosnia, as a Professor, International and Operational Law Department, The Judge Advocate General’s Legal Center and School, as a Deputy Staff Judge Advocate, 1<sup>st</sup> Cavalry Division, Baghdad, Iraq. The views expressed in this article are those of the author and not The Judge Advocate General’s Corps, the United States Army, or the Department of Defense.

1. Dep’t of Def. Directive 3000.05, Military Support for Stability, Security, Transition, and Reconstruction (SSTR) Operations (Nov. 28, 2005), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf>.

2. *Id.* at ¶ 1.1.

3. *Id.* at ¶ 1.2.

4. *Id.* at ¶ 3.1.

obviously fit within this definition. Therefore, the military has a role in post-conflict reconstruction. More pointedly, the directive further states that:

stability operations are a core U.S. military mission that the Department of Defense shall be prepared to conduct and support. They shall be given priority comparable to combat operations and be explicitly addressed and integrated across all DoD activities including doctrine, organizations, training, education, exercises, materiel, leadership, personnel, facilities, and planning.<sup>5</sup>

This is a pretty strong statement about the military's role in stability operations. I am sure that you have all heard the mantra that the mission of the United States' military is to fight and win the nation's wars. I don't think that this new policy changes that mission, but I do think it may demand a broader understanding of what the "nation's wars" means. Included within that mission are post-conflict reconstruction and other stability operations.

In practical terms, this means learning how to create an effective judicial system is as important as tank gunnery, establishing a legitimate police force is as vital as conducting an ambush and ensuring a fair and humane prison system is as necessary as knowing how to supply food, fuel and ammunition to forces in battle. This point is made in the Army's new manual on counterinsurgency operations.<sup>6</sup>

On the other hand, by making it a core mission, that is not to say that the military is always the right organization to do everything needed. While confirming that the "U.S. military forces shall be prepared to perform all tasks necessary to establish or maintain order when civilians cannot do so,"<sup>7</sup> the Directive also concedes that "many stability operations tasks are best performed by indigenous, foreign, or U.S. civilian professionals."<sup>8</sup> This point becomes self-evident considering the breadth of requirements in a post-conflict reconstruction environment. For example, the DoD Directive lists one of the stability operations tasks as "reviv[ing] or build[ing] the private sector, including encouraging citizen-driven, bottom-up economic activity and constructing necessary infrastructure."<sup>9</sup>

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5. *Id.* at ¶ 4.1.

6. U.S. DEP'T OF THE ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY 2-1 (Dec. 15, 2006).

7. Department of Defense Directive 3000.05, *supra* note 1, at ¶ 4.3.

8. *Id.*

9. *Id.* at ¶ 4.3.2; *see also* Peter W. Chiarelli & Patrick R. Michaelis, *Winning the Peace: The Requirement for Full Spectrum Operations*, Mil. Rev., Jul.-Aug. 2005

The United States military does not have a spot for a soldier with the job title of “entrepreneur educator.”

In the Army, we do have Civil Affairs units, which often contain people both on active duty and in the Reserves who have a multitude of practical skills that are and have been a great help in stability operations, including those taking place within Iraq and Afghanistan. However, there are a limited number of these skilled individuals and they bring what skills they have to the mission and can not be made to order. As a matter of training it is much easier to train a soldier on running a platoon of infantry soldiers than it is to train a soldier on running a city sanitation system. Those are skills that are taught and learned in the civil sector.

This problem is highlighted by a recent exchange between Secretary of Defense Gates and Secretary of State Rice. Secretary Gates was recently questioned about a memo sent by the State Department asking the DoD to temporarily fill more than one third of the Iraq slots allocated to the State Department.<sup>10</sup> Secretary Gates responded by saying “if you were troubled by the memo, that was mild compared to my reaction when I saw it.”<sup>11</sup> He argued that the DoD has neither sufficient personnel to do all the military jobs needed in Iraq nor all the skill sets required to do so.

Unfortunately, despite the need for greater civilian involvement in Iraq and similar situations, the State Department is not manned appropriately for this mission either. Secretary Rice stated before Congress, “The problem is the State Department doesn’t have agronomists and engineers and city planners. No foreign service in the world has those people.”<sup>12</sup> Nevertheless, National Security Presidential Directive 44 makes the Department of State the “focal point” for coordinated U.S. efforts in this area and gives them the task to “coordinate and lead integrated U.S. government efforts.”<sup>13</sup>

Obviously, not every post-conflict reconstruction situation will be like

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(discussing the 1<sup>st</sup> Cavalry Division’s civil military operations, including attempts to spur local business and investment).

10. Helene Cooper, *Where U.S. Diplomats Fear to Tread; Call for Increased Civilian Role in Hostile Areas Met with Unease*, INT’L HERALD TRIB., Feb. 8, 2007, at 1, available at <http://www.iht.com/articles/2007/02/08/news/diplo.php>.
11. Michele Kelemen, *Morning Edition: Reconstruction Teams at Premium in Iraq* (NPR radio broadcast Feb. 9, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=7299387>.
12. *Id.* see also Helene Cooper, *Blame (Blank) for Iraq*, N.Y. TIMES, Feb. 11, 2007, at 1, available at <http://www.nytimes.com/2007/02/11/weekinreview/11cooper.html?fta=y>.
13. Nat’l Sec. Pres. Dir. No. 44, Management of Interagency Efforts Concerning Reconstruction and Stabilization 2 (Dec. 7, 2005), available at <http://www.fas.org/irp/offdocs/nsdp/nsdp-44.html>.

Iraq, but it may be one of the more difficult situations because of the nature of the security environment. If we can figure out how to make our efforts work in Iraq against an active and virulent insurgency, we should have great success in more permissive environments. And the only way to actually have success is a truly coordinated effort from all government agencies, providing what capabilities they have.

Now, let me give some examples of what the Army can bring to the post-conflict reconstruction problem. I have previously mentioned the Civil Affairs units and the amazing skills they provide. Civil Affairs units were active in Haiti<sup>14</sup> and Bosnia<sup>15</sup> as well as Iraq and Afghanistan.<sup>16</sup> They have performed vital missions from organizing all nongovernmental organization actions within a country to training judiciary and police and protecting local businesses from graft and illegal taxes. In response to current missions, as well as to the new Directive, the Army is reexamining our efforts in Civil Affairs and trying to make it better. The issuance of a new doctrinal manual, Field Manual 3-05.40, Civil Affairs Operations,<sup>17</sup> highlights this renewed emphasis.

In the new manual, Civil Affairs units are charged with "provid[ing] the military commander with expertise on the civil component of the operational environment."<sup>18</sup> They focus on five core tasks: Populace and Resources Control, Foreign Humanitarian Assistance, Civil Information Management, Nation Assistance, and Support to Civil Administration.<sup>19</sup> As you can see, they have a broad mission, and the Army is trying to expand its capabilities to meet those missions, not only in the Reserves where the vast majority of the Civil Affairs personnel currently reside, but also by increasing the number of active duty Civil Affairs soldiers.

However, this expanded capability will take time to build. In the interim within the rule of law area, the Army is often using Judge Advocates to fill the gaps, especially at division-sized units and smaller. For example, in Iraq and Afghanistan, Judge Advocates have been intricately involved in the rebuilding of the judicial process, to include courts, police and prisons.<sup>20</sup> They were relied on to know and understand

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14. CENTER FOR LAW AND MILITARY OPERATIONS, FORGED IN THE FIRE: LEGAL LESSONS LEARNED DURING MILITARY OPERATIONS 1994-2006, 11-14 (Sept. 1, 2006) [hereinafter FORGED IN THE FIRE].

15. *Id.* at 14-16.

16. *Id.* at 23.

17. See U.S. DEP'T OF THE ARMY, FIELD MANUAL 3-05.40, CIVIL AFFAIRS OPERATIONS (Sept. 2006).

18. *Id.* at 1-1.

19. *Id.* at 1-3.

20. CENTER FOR LAW AND MILITARY OPERATIONS, LEGAL LESSONS LEARNED FROM

local governance and its processes<sup>21</sup> and to be the expert on environmental compliance.<sup>22</sup> Judge Advocates were also used to conduct liaison with local leaders, to synchronize the commander's efforts with other governmental and nongovernmental agencies and to assist in the establishment and functioning of the Central Criminal Court of Iraq.<sup>23</sup> These past efforts by Judge Advocates and a continuing need for Judge Advocates who are trained and capable of accomplishing these tasks prompted the Center for Law and Military Operations and U.S. Joint Forces Command to issue the "Rule of Law Handbook: A Practitioner's Guide for Judge Advocates."<sup>24</sup>

Judge Advocates have obviously not been the only military members involved in the post-conflict reconstruction efforts. Units have approached the problems in their areas in innovative and thoughtful ways. Using the money initially confiscated from the Hussein regime, the Commander's Emergency Response Program (CERP) was initiated. This program allowed commanders to carry out infrastructure and other projects such as sewer and trash clean-up in their local areas, and employ local Iraqis and Afghans in the process. On a broader scale, money was used to repair power systems and get power and water back into neighborhoods that were without those resources. All of these efforts are beyond the normal scope of what many military personnel thought their traditional military tasks were. But these were things that needed to be done and no one else was there to do them.

While I believe the Judge Advocates and others have performed marvelously, it is still worth reflecting if they are the right people to do this work, or even if the rejuvenated Civil Affairs units are the right people to do this work. There is no doubt that the requirements for interaction with the local populace will always be a part of the mission when the U.S. goes into a post-conflict situation. What is the best way to handle that? Should the Army put understanding how to run a city sanitation system on the same level with performing well at tank gunnery? Is it the best use of resources to take slots within the military that would otherwise be used for military policemen or infantryman and turn them into civil affairs experts?

Alternatively, should we rely on the State Department's system of incentives and cash bonuses to draw enough volunteers? Or should we try

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AFGHANISTAN AND IRAQ, VOLUME II: FULL SPECTRUM OPERATIONS 20-61 (Sept. 1, 2005).

21. *Id.* at 112-14.

22. *Id.* at 177-78.

23. FORGED IN THE FIRE *supra* note 14, at 122-32.

24. CENTER FOR LAW AND MILITARY OPERATIONS & JOINT FORCE JUDGE ADVOCATE, RULE OF LAW HANDBOOK: A PRACTITIONER'S GUIDE FOR JUDGE ADVOCATES (July 2007).

something else, such as the civilian reserve corps? In the absence of other options, the military will do its best to fill the gap, but I think the question of whether that is the wisest course of action in the long run deserves some attention.